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**BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON**

TUCKER TRADING, INC.,)	
)	FPAB NO. 93-85
Appellant,)	
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
STATE OF WASHINGTON,)	AND ORDER
DEPARTMENT OF NATURAL)	
RESOURCES,)	
)	
Respondent.)	
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This matter came on before the Honorable William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Dr. Martin R. Kaatz and Robert E. Quoidbach.

The matter is an appeal of civil penalties totalling \$4500 for alleged violation of forest road regulations.

Appearances were as follows:

1. Wayne B. Knight, Attorney at Law, for appellant.
2. John E. Justice, Assistant Attorney General, for the Washington State Department of Natural Resources.

The hearing was conducted at the Board's office in Lacey, Washington, on February 22, 1994.

Gene Barker & Associates, Olympia, provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Forest Practices Appeals Board makes these

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
FPAB NO. 93-85**

1
2 **FINDINGS OF FACT**

3 **I**

4 This matter arises in Snohomish County, and concerns the construction and
5 maintenance of forest roads.

6 **II**

7 On April 7, 1993, appellant, Tucker Trading, Inc., filed with the respondent, State of
8 Washington, Department of Natural Resources (DNR) a forest practices application. The
9 application contemplated the harvest of 96 acres of timber. It also proposed one-half mile of
10 forest road to haul the logs. The DNR approved this application on April 12, 1993.

11 **III**

12 Appellant, who is the operator and timber owner, engaged a concern known as "Woods
3 Logging" to build the road. During May and June, 1993, Woods Logging built the first
14 segment of forest road. This ran generally east and west.

15 **IV**

16 On August 4, 1993, DNR's Resource Protection Forester visited the site. While there,
17 the DNR Forester noted silted water on the road running to adjacent waters. The road was not
18 outslowed or crowned. The DNR Forester then issued to appellant a Stop Work Order with
19 respect to road construction and maintenance. The Stop Work Order provided:

20 *The road must be shaped, ditched, cross drained and surfaced to meet minimum forest*
21 *practices standards.*

V

The DNR Forester did not condition the Stop Work Order to require re-inspection by DNR prior to resuming operations. Rather, the Forester indicated that corrections could be made, and operations resumed, without re-inspection by DNR.

VI

At this point, Woods Logging withdrew from the project. Appellant then engaged a company known as "C & C" to solve the problems noted in the stop work order. The first segment of forest road, running generally east and west, was both ditched and crowned. The evidence in this matter does not further address nor show deficiency with regard to that first segment of road.

VII

A second segment of forest road was to extend from the first. That second segment would run north and south. Appellant engaged "Wayne Hill and Sons" during August, to build this second segment. Hauling over the first segment was resumed. Construction for the second segment began.

VIII

On August 17, 1993, the DNR Forester visited the site again. Certain disagreements ensued between the DNR Forester and a member of Wayne Hill and Sons. The DNR Forester did not document the conditions then existing, in contrast to prior and subsequent visits. Neither were written orders issued.

IX

The harvest operations began, and were in progress during the fall. Appellant attempted to mitigate the effects of erosion from harvesting by using skyline logging techniques for about two thirds of the harvest. The balance was done with high lead. Skyline logging costs more than high lead and produces less erosion..

X

On October 8, 1993, with operations in progress, the DNR Forester re-visited the site. The second, or north-south, segment of forest road showed construction and maintenance deficiencies. Again, the DNR Forester issued a Stop Work Order. It provided that:

Road surface, ditching and maintenance must be sufficient to prevent silted water from entering flowing water.

Silted water from the road was entering adjacent flowing waters at 1) a creek crossing, and 2) a cross drain culvert. Drain culverts were 12 inches in diameter. A ditch was blocked. Both flowed toward a beaver pond wetland. Approximately 1000 feet from the creek crossing there is a fish-bearing lake known as Lake Julia.

XI

On October 19, 1993, again with operations in progress, the DNR Forester re-visited the site. Appellant had hand shoveled the ditch to relieve the blockage seen on October 8, 1993. However, the culvert at the creek crossing of the road had become impaired and plugged. Some water crossed the road at another location and moved towards wetlands. The DNR Forester then mailed a third Stop Work Order. Because harvest was nearly complete,

1 that Stop Work Order required meeting road standards and abandonment following harvest.
2 Harvest was complete one week later. Appellant has since seeded and blocked the road. The
3 DNR has not made written approval of this road closure.
4

5 XII

6 The road in question probably increased background sediment eroding from the site by
7 40%. This equates to 2 to 3 cubic yards of material. The distance and stillness of the wetland
8 waters between the road and Lake Julia make it likely that no more than 10% of these
9 additional sediments entered the lake. That occurred during rainy weather following the
10 harvest. Sediment probably did enter wetlands as a result of appellant's road construction and
11 maintenance. This had an adverse effect by contributing to the blocking of light, which drives
12 the ecosystem, and in reducing water carrying capacity. The siltation did not, however,
13 directly result in significant damage to water resources.
14
15

16 XIII

17 The appellant was not shown to have any history of prior violations despite 23 years of
18 logging.
19

20 XIV

21 On November 4, 1993, the DNR assessed civil penalties totaling \$4,500 against
22 appellant. These were issued with citation to: 1) road design and construction requirements,
23 2) road maintenance requirements and 3) the requirement to obey a stop work order. Those
24 three requirements were each alleged to have been violated on each of three dates:
25
26

1 1) August 17, 1993, 2) October 8, 1993, and 3) October 19, 1993. The assessment employed
2 the maximum \$500 penalty per day, per regulation resulting in 9 penalties of \$500 each,
3 totaling the \$4,500. The DNR calculated the penalties, noting lack of cooperation, prior
4 knowledge of the Forest Practices Act and significant damage to a public resource.
5

6 XV

7 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

8 From these Findings of Fact, the Board issues these:
9

10 CONCLUSIONS OF LAW

11 I

12 Road Design and Construction. The forest practices rules, at WAC 222-24-025,
13 address road design:
14

15 (5) All roads should be outsloped or ditched on the uphill side and
16 appropriate surface drainage shall be provided by the use of adequate cross
17 drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or
18 other such structures demonstrated to be equally effective

19 (7) Install cross drains, culverts, water bars, drivable dips, or diversion
20 ditches on all forest roads to minimize erosion of the road bed, cut bank, and
21 fill slope, or to reduce sedimentation of Type 1, 2, 3, or 4 Water. Cross
22 drains are required in wetlands to provide for continued hydrologic
23 connectivity. These drainage structures shall be installed at all natural
24 drainages, all low points in the road gradient and spaced no wider than as
25 follows
26

<u>Grade</u>	<u>Distance Westside</u>	<u>Distance Eastside</u>
0 to 7%	1,000 ft.	1,500 ft.
8% to 15%	800 ft.	1,000 ft.
over 15%	600 ft.	800 ft.

More frequent culvert spacing or other drainage improvements are required where site specific evidence of peak flows or soil instability makes additional culverts necessary to minimize erosion of the road bed, ditches, cut bank, and fill slope to reduce sedimentation of Type 1, 2, 3 or 4 Waters, or within wetlands or to avoid unreasonable risk to public resources. See "Additional culvert spacing recommendations" in the forest practices board manual. On request of the applicant, the department may approve less frequent drainage spacing where parent material (e.g. rock, gravel) or topography justify

(8) Relief culverts installed on forest roads shall meet the following minimum specifications

- (a) Be at least 18 inches in diameter or equivalent in western Washington and 15 inches in diameter or equivalent in eastern Washington
- (b) Be installed sloping toward the outside edge of the road at a minimum gradient of 3 percent

Also, WAC 222-24-030(6) requires that all ditches, culverts, cross drains, drainage dips, water bars, and diversion shall be installed concurrently with the construction of the roadway.

II

Road Maintenance The forest practices rules, at WAC 222-24-050(2) provide:

Active roads. An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads

- (a) Culverts and ditches shall be kept functional.
- (b) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade
- (c) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.

1
2 III

3 Stop Work Orders. The forest practices rules, at WAC 222-46-040, set forth DNR's
4 authority to issue stop work orders:

- 5 (1) The department shall have the authority to serve upon an operator a stop
6 work order which shall be a final order of the department if:
7 (a) There is any violation of the provisions of the Forest Practices Act or these
8 regulations; or
(b) There is a deviation from the approved application; or
(c) Immediate action is necessary to prevent continuation of or to avoid
material damage to a public resource.

9 Also, in that rule, at -(2)(d) it is provided that, *"The operator shall comply with the order of*
10 *the department immediately upon being served..."*

11 IV

12 Events of August 17, 1993. By the time of DNR's site visit on August 17, 1993, the
13 first (east-west) segment of forest road had been repaired by ditching and crowning. There
14 was no showing that the second (north-south) segment had progressed beyond its barest
15 beginning. The problems with the first road segment being solved, and the problems with the
16 second road segment not having begun, the three \$500 penalties for the events of August 17,
17 1993, should be vacated

18 V

19 Events of October 8, 1993. On October 8, 1993, appellant had developed the second
20 (north-south) road segment. It did so without appropriate surface drainage in violation of
21 WAC 222-24-025(5) The intervals required by WAC 222-24-025(7) for drainage structures
22 were not proven to have been violated. The 18" minimum diameter for relief culverts required
23 by WAC 222-24-025(8) was violated through appellants use of 12" culverts. Appellant
24 violated WAC 222-24-050(2)(b) and (c) by failing to maintain road surface as necessary to
25

1
2 minimize erosion and by failing to crown, outslope or water bar the road. Finally, appellant
3 violated the stop work order served on August 4, 1993, by proceeding with construction and
4 use of the second (north-south) road segment without meeting the foregoing minimum forest
5 practice standards.

6 VI

7 Events of October 19, 1993. On October 19, 1993, the appellant violated each of the
8 forest practices rules enumerated with regard to October 8, 1993, above. In addition,
9 however, a crushed or clogged culvert observed that day constituted violation of
10 WAC 222-24-050(2)(a) requiring that culverts be kept functional. Further, violation of each
11 minimum forest practice standard was a violation of the stop work order of October 8, as well
12 as that of August 4, 1993.

3 VII

14 Amount of Penalty. Subtracting the 3 vacated penalties from the 9 assessed leaves 6
15 penalties at \$500 each or \$3,000 as assessed. These should be partially abated for the
16 following reasons. First, appellant's personnel were cooperative in attempting to resolve the
17 problems. The differences between the parties were partly compounded by DNR's stop work
18 order authorizing a re-start of the project without sign off or re-inspection. Also compounding
19 the difficulty was the relatively long interval between the DNR's site visit on August 17, 1993,
20 and the next visit on October 8, 1993, although a stop work order was pending. Next, the
21 damage to public resources was not significantly adverse. Finally, although appellants
22 experience in the business is lengthy, its record does not show prior violations. We also note
23 appellant's effort to use the more expensive skyline logging out of concern for public
24 resources. Each of the 6 penalties should be reduced to the base level, due to these factors.

1
2 This totals \$1,100 per day, calculated as "Design and Construction", \$300; "Maintenance",
3 \$300, "Stop Work Order", \$500. The two days thus should result in penalties totaling \$2,200.

4 VIII

5 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
6 From the foregoing, the Board issues this:

1
2 **ORDER**

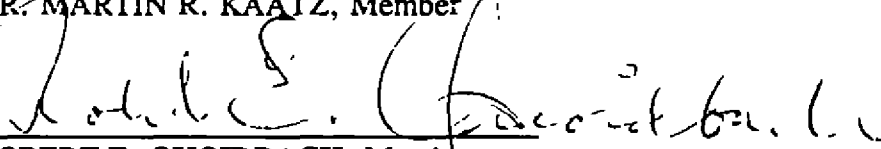
3 The violations of August 17, 1993, are vacated. The violations of October 8 and 19,
4 1993, are affirmed. The penalties are abated to base levels. Penalties are thereby affirmed in
5 the total amount of \$2,200.

6 DONE at Lacey, WA, this 20th day of April, 1994.

7 
8 HONORABLE WILLIAM A. HARRISON

9
10 **FOREST PRACTICES APPEALS BOARD**

11
12 
13 DR. MARTIN R. KAATZ, Member

14
15 
16 ROBERT E. QUOIDBACH, Member

17 F93-85F